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9 *Acting Director of the Department of Toxic*  
*Substances Control*

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A.J. GAMBOL

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11  
12 COUNTY OF CONTRA COSTA

14 **PEOPLE OF THE STATE OF**  
15 **CALIFORNIA, ex rel. MIRIAM**  
16 **BARCELLONA INGENITO, ACTING**  
17 **DIRECTOR OF THE DEPARTMENT OF**  
**TOXIC SUBSTANCES CONTROL,**

Plaintiff,

19 v.

20 **ELECTRO-FORMING, CO.; MARION**  
21 **PATIGLER; THE ESTATE OF**  
22 **GERHARD PATIGLER; THE ESTATE**  
**OF INGRID PATIGLER; AND DOES 1-50**

23 Defendants.

Case No. C 13 - 01691

**[PROPOSED] ORDER RE: PLAINTIFF'S**  
**MOTION TO MODIFY PRELIMINARY**  
**INJUNCTION**

**Date: November 12, 2014**

**Time: 9:00 a.m.**

**Dept: 33**

**Judge: The Honorable Steve K. Austin**

24 Before the Court is Plaintiff People of the State of California ex rel. Miriam Barcellona  
25 Ingenito, Acting Director of the Department of Toxic Substances Control's ("DTSC") Motion to  
26 Modify the Preliminary Injunction (the "Motion").  
27

28 DTSC argues that the conduct of Defendants Electro-Forming Co. and Marion Patigler

1 (“Defendants”) have violated the Preliminary Injunction which was put in place by this Court on  
2 March 5, 2014 (the “March 5 Injunction”), and that these violations necessitate modifying the  
3 March 5 Injunction.

4 The March 5 Injunction, among other things, required the Defendants to:

5 (1) Not dispose of hazardous waste on the ground surface or any other unauthorized location  
6 (¶ 1);

7 (2) Not transport hazardous waste without a valid registration under Health & Safety Code §  
8 25163 (¶ 2);

9 (3) Properly and timely dispose of accumulated hazardous waste within 90 days (¶ 5);

10 (4) Prepare complete and correct hazardous waste manifests (¶ 5a);

11 (5) Immediately collect, characterize, and containerize any spillage and dragout from plating  
12 and stripping operations (¶ 10a);

13 (6) Immediately collect, characterize, and containerize any dust generated by buffing,  
14 polishing, or grinding (¶ 10b)

15 (7) Comply with applicable regulations concerning marking and labeling of hazardous waste  
16 containers (¶ 11a); and,

17 (8) Store hazardous waste in covered containers (¶ 12).

18 DTSC lays out a detailed and comprehensive picture of Defendants’ conduct over the past  
19 several months, and satisfies the Court that Defendants have violated the provisions of the March  
20 5 Injunction in multiple ways, including, but not limited to, the following:

21 (1) Buffing dust is stored in open containers, covers much of the facility, and perhaps most  
22 troubling, has contaminated neighboring properties;

23 (2) A 275-gallon tote of hazardous acid water is unaccounted for. No manifest demonstrates  
24 its disposal, and its current status and whereabouts are unknown;

1 (3) A pile of hazardous waste was sitting in an open bed of a pick-up truck, uncontainerized  
2 and mixed in with other garbage;

3 (4) Many containers including hazardous waste were not covered, and were not properly  
4 labeled;

5 (5) Hazardous spillage and drippage was found sitting in a sump, poised to contaminate the  
6 sewer system, the surrounding neighborhood, or both.

7  
8 In opposition, Defendants submit only a declaration of counsel. They make essentially two  
9 arguments: (1) that the Motion is improper, and should have been brought as a contempt  
10 proceeding, permitting an evidentiary hearing; and (2) Defendants dispute many of the factual  
11 assertions contained in the Motion. Neither of these arguments is supported by any authority  
12 whatsoever. Further, Defendants do not identify which specific factual assertions they contend are  
13 inaccurate, and they do not provide the Court with any evidence whatsoever to support a  
14 contention that any of the factual assertions contained in the Motion are inaccurate.

15  
16 Code of Civil Procedure § 533 provides the Court authority to modify or dissolve the March  
17 5 Injunction. Section 533 provides, in relevant part:

18 In any action, the court may on notice modify ... an injunction ... upon a showing that there  
19 has been a material change in the facts upon which the injunction ... was granted ... or that the  
20 ends of justice would be served by the modification or dissolution of the injunction.

21 Therefore, if the Court is satisfied either (1) that there has been a material change in the facts  
22 upon which the March 5 Injunction was put in place or (2) that the ends of justice would be  
23 served by the modification of the March 5 Injunction, the Court may grant the Motion.

24  
25 Here, the Court finds that there has been a material change in facts which would support  
26 granting the Motion. The Court also finds that the ends of justice would be served by granting the  
27 Motion.

1 It is apparent that since the March 5 Injunction was put in place, a change in material fact  
2 has taken place. Namely, the threat of contamination posed by Defendants' conduct has only  
3 increased. Neighboring properties and businesses are at increased risk of suffering harm of all  
4 kinds caused by Defendants' conduct, including having their property coated in hazardous dust  
5 generated by Defendants' business operations. In addition, the risk to the public has only  
6 increased since the issuance of the March 5 Injunction, due to Defendants' continued disregard  
7 for complying with the March 5 Injunction or the applicable provisions of the Health and Safety  
8 Code and its implementing regulations, as demonstrated in part by the violations set forth above.  
9 Finally, the risk to the environment generally has only increased since the issuance of the March 5  
10 Injunction, for the reasons stated above.


12 Permitting Defendants to continue metal plating, metal stripping, buffing, polishing, or  
13 grinding operations, when they have demonstrated either no ability or no willingness whatsoever  
14 to comply with the March 5 Injunction or the applicable provisions of the Health and Safety Code  
15 and its implementing regulations, would not be just. On the contrary, it would unnecessarily and  
16 unfairly subject neighboring businesses and property owners, the public, and the environment, to  
17 a continued and unjustifiable heightened risk of exposure and contamination from a plethora of  
18 hazardous substances. As such, modifying the March 5 Injunction to prevent Defendants from  
19 continuing to violate California law and thereby causing harm to neighboring property, the public,  
20 and the environment, would serve the ends of justice.

22 The Motion is granted. At such time as Defendants can demonstrate to this Court that they  
23 have removed all hazardous waste from the subject property, in accordance with the Hazardous  
24 Waste Control Law, and that an inspection of the subject property by the DTSC has been  
25 completed, they may file a noticed motion to further modify the injunction. At that time, the  
26 Court will consider permitting Defendants to resume operations consistent with the provisions of  
27

1 the March 5 Injunction or under any other requirement(s) as justice may require.  
2

3 IT IS SO ORDERED.  
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5 DATED: 11/12/14  
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8 THE HONORABLE STEVE K. AUSTIN  
9 JUDGE OF THE SUPERIOR COURT  
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